Investigation and Prosecution of Sexual Offences in Relation to Forensic Medical Evidence in Kiambu County, Kenya.

Ndung'u, R. G[1], Kariuki, J, G[2], Thaimuta, Z. L[3]

[1,2] College of Health Sciences, Mount Kenya University, Kenya
[3]College of Health Sciences, University of Nairobi, Kenya
Correspondence: richardndungu1313@gmail.com

Abstract

Kenya police annual reports show that sexual offences are escalating in Kenya. This study was done to find out the challenges the police officers within Kiambu County faced in the course of evidence collection, investigation and prosecution of sexual offences. The research involved conducting interviews and administration of Likert scale questionnaire for police officers trained on handling sexual offenses as the key informants, and use of data abstraction tool to collect data from the police record files in the year 2016. Analysis of P3 forms indicated that 50% of reported victims had hymen broken, 40.9% had genital lacerations and 9.1% had hymen intact. It was established common laboratory tests ordered in rape cases are: high vaginal swab (77.3%), HIV (95.5%), pregnancy (77.3%) and DNA analysis (13.6%). Great amount of evidence (77%) collected in rape investigation is not sent to forensic laboratories for analysis. The other setbacks included lack of collaboration between the police gender department and other government agencies like health facilities handling cases of sexual offences, and inadequate support for the gender offices to effectively handle cases of sexual offences. Only a third of reported sexual offence cases reach full trial. Inadequacies were observed in filling of the P3 and Post Rape Care (PRC) forms and there was lack of adherence to chain of custody in evidence handling. Challenges in investigation and prosecution of sexual offences adversely affects justice for the victims. Recommendation for continuous specialized training to clinicians on forensic medical evidence, infrastructural upgrade, modern tools for gender departments and a multidisciplinary approaches in handling sexual offences.

Keywords: *Prosecution, Sexual Offences, Forensic Medical Evidence, Kiambu county, Kenya.*

Check for Updates

Ndung'u,R,G
Kariuki, J, G
Thaimuta, Z. L
Received: 12 June 2021

Accepted: 16 Sep 2021

Published: 21 October 2021

Introduction

Sexual violence crimes happen throughout the world with varying incidence in different countries. Areas like Latin America the study shows that among the sexually assaulted adults less than five percent report to law enforcing institutions. Sexual violence by partners reported by women, between the ages of 15-49 years was 59% in Ethiopia which was the highest in the country included in the survey, in majority of the countries the rate falls between 10% and 50% (WHO, 2012).

Kenya Demographic Health Survey (KDHS) findings was that one in every five or 21% of Kenya women between ages 15 and 49 years were exposed to various form of sexual violence. Moreover, KDHS found that 12% of women reported that their first encounter of sexual intercourse was against their consent. Further 40% and 44% of women and men respectively age between 5 and 49 years have experienced physical violence from the age of 15 years, of these 20% and 12% of women and men respectively have been physically abused within one year before the survey (KDHS, 2009).

According to the National Police Service (NPS), 2015 annual report, Kiambu County ranked third in crimes against morality at 238 cases after Nakuru and Bungoma Counties. There was 19% increase in offences against morality in 2015 compared to 2014 in Kiambu County. The report cited an increase of the same offences by 8% in the year 2014. Tigoni Police Station recorded 9 cases in 2015, but there was a sharp increase in 2016 recording 19 cases (NPS 2015).

Sexual assault offences are defined, outlined and stipulated in the Kenya Sexual Offences Act 2006. In Kenya, only 25% of sexual assault cases presented before a court of law leads to successful convictions. This poor outcome is as a result of insufficiency of health workers and law enforcement agent to gather evidence from victims promptly and effective way.

Examination of victims of suspected sexual assault requires a combination of skills in clinical history taking, thorough physical examination, collection and preservation of substantial physical evidence for forensic assessment. Clinicians' capacity in handling of sexual offences and through collection, preservation of physical evidence, analysis, reporting and conclusion are key for sexual offences cases.

In year 2006, Kenya successfully enacted policing laws to help curb Sexual and

Gender based Violence (SGBV), nevertheless these offences continue to be endemic in the country. Clinicians' capacity in handling of sexual offences by collection and preservation of physical evidence, analysis and reporting, and conclusion were among key aspect for conducting this research. Forensic medical evidence is vital in prosecution of sexual offences because of its utility in aiding determination of the cases in a court of law.

There is therefore need for a study to establish challenges in the investigation and prosecution of sexual offences in relation to forensic medical evidence in Kiambu County**.**

Methodology

The research involved interviews using a guide with specified questions that begins with *how* or *what* and Likert scale questionnaire for police officers trained on investigation and prosecution of sexual offenses. The police in Tigoni, Kikuyu and Thika police stations were the key informant. Information on challenges and experience in the probation and prosecution of sexual offence.

Triangulation was used during data collection as a data management tool. All the Police files on sexual offences for the year 2016 were examined. The files sample frame comprised of the files in the year 2016, involving sexual offences.

Research Design

It was descriptive cross sectional study, to assess challenges in the probation and prosecution of sexual offences in relation to forensic medical evidence in Kiambu County.

Study Area

Research was conducted within Kiambu County, Tigoni, Kikuyu and Thika police gender department. These police stations were selected for this study because they were considered to apply best practices in handling sexual offences in Kiambu County, their population density and were situated in main sub counties hence making outcomes of the study representative.

Study Population

Four police officers trained in trained on handling sexual offences and two senior most police officers were recruited from each of the three police stations. An interview was conducted on them and then Likert scale questionnaire was administered. Two senior police officers were not available due to other official engagements. One hundred and ninety-four files (NPS, 2016) on reported cases against morality in Kiambu County were perused. The reported cases included rape, defilement, sodomy, incest, indecent act, bestiality among others. In this, the accessible population to the study was in Tigoni, Kikuyu and Thika police gender departments. Each of the gender department reports an average of 20 cases in a year, comprising of 60 cases of accessible population.

Data Collection Methods and Procedures

The researchers conducted interviews to 16 key informant who were police officer trained and experienced in handling sexual offences. Likert scale questionnaire was administered to the same officers including their supervisors. The interviews were face to face and involved audio recording and taking notes lasting for 30-40 minutes followed by Likert scale questionnaires lasting for 8-12 minutes. The researchers accessed the police files involving sexual offenses for year 2016 and required information captured in the data capture tool. Each file perusal took 10-15 minutes. The data was captured using a structured questionnaire, Likert skill and audio. The data was screened through frequency checks, physical count and double entry.

Analysis was done using IBM statistics.

Ethical Considerations

Permission to conduct this study was obtained from Mount Kenya University (MKU) Research Ethics Committee and National Commission for Science, Technology and Innovation (NACOSTI). Permission from Tigoni, Thika and Kikuyu police gender departments was sort before commencement of data taking. Information obtained during the study was confidential and anonymity was observed as no names or any other personal identification was captured.

Results

i) *Qualitative results*

The study sought to establish the challenges that are encountered in obtaining forensic medical evidence for sexual offences during investigations. The use of descriptive study design was to find out facts without manipulation of data, seek opinions, analyse and interpret findings. Triangulation of information was used to aid in validation of the results, and helped to collaborate the themes identified from the manuscripts. The most noticeable themes were;

i. Loss of vital evidence before reporting as most victims of sexual assault not being aware how to preserve evidence before reporting to police or visiting a health facility.
ii. Clinicians lacking full insight on how handle victims of sexual offences, collect and preserve forensic medical evidence. iii. Lack of collaboration between the police gender department and health facilities in handling cases of sexual offences.
iv. Inadequate support to the police gender department to effectively handle cases of sexual offences.

The study found out that the lack of awareness by the victim on the right thing to do after such incidences have taken place led to the interfering of evidence by the victims through taking showers and having a change of cloth. The delay of the victims in reporting of such cases leads to the degradation of evidence as time elapses. In addition, the study found out that the lack of adequate training of the medical personnel handling the victims was equally a challenge in obtaining the required forensic medical evidence. Thus, these challenges encountered had an effect on the prosecution of the sexual offences which in some cases led to the acquittal of the offenders and therefore justice is denied to the victims.

The study established the poor collaboration between the medical personnel and the police officers, the police stations and the government hospitals affected the processing and presenting forensic medical evidence during prosecution. The processing and presenting of this evidence is further impeded by the lack of proper storage facilities for the exhibits. The analysis of DNA samples took unnecessarily long duration, but in majority of cases the DNA sample was not collected in the first place which would have served to place the offender at the scene of crime. Therefore, these challenges in processing and presenting of the forensic medical evidence affected the strength of prosecution of the sexual offences.

Triangulation used to assess the accuracy of the key informant interview confirmed most of the information gathered. There existed several inadequacies in regard to the police documents that are used in the gathering of evidence. Most of the documents did not capture all the necessary information, and were not accompanied by the evidence and specimens collected. In cases where exhibits were available, there was a generally poor preservation of the same. This therefore served to weaken the prosecution of offenders involved in sexual offences. There was glaring discrepancies between the P3 and PRC forms of the same victims.

In regard to the challenges in the chain of custody of forensic medical evidence, the study found that the chain of custody was not well established in most cases that were studied. Thus, the lack of a well-established chain of custody can affect the overall prosecution of sexual offences.

ii) Quantitive Results

Evidence Analysis in the P3 Form

From the findings, it was established that 11 (50%) respondents indicated that based on the evidence analysis carried out, the hymen was not intact, with the genitals having lacerations, 9 (40.9%) indicated there was no evidence analysis that was carried out, 2 (9.1%) reported that the evidence analysis revealed that the hymen was intact. The findings therefore indicate that evidence analysis revealed that there was

actual offence committed as evidenced by the broken hymen and lacerations. However, the findings also show that there was no evidence analysis in a number of cases which serves to compromise the weight of evidence being presented during the prosecution of the cases Figure 1 below.

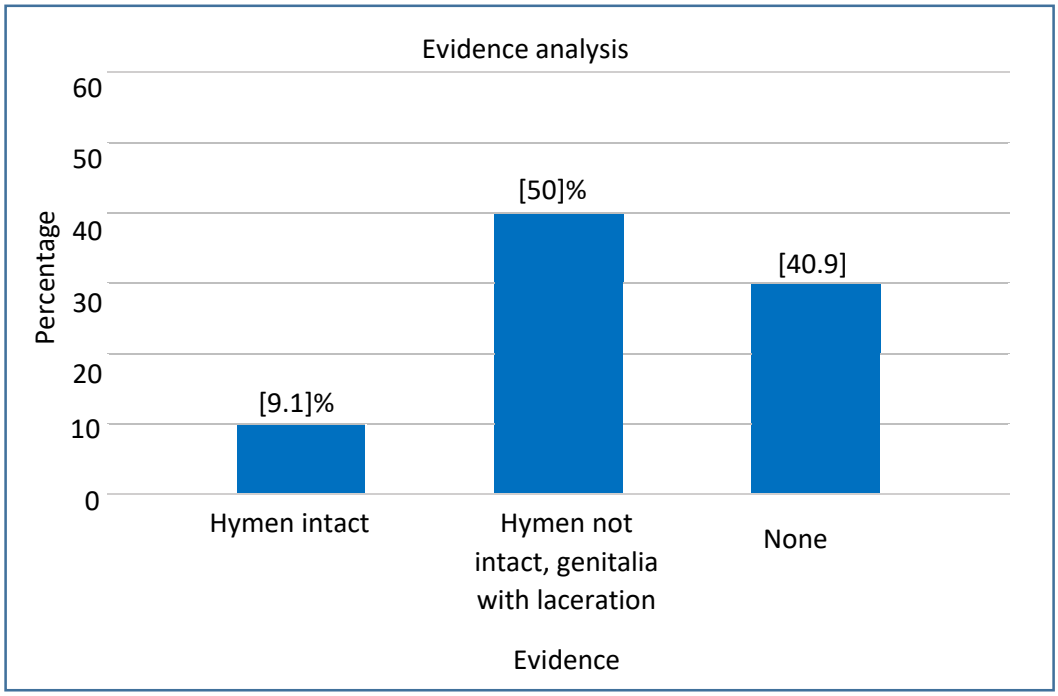
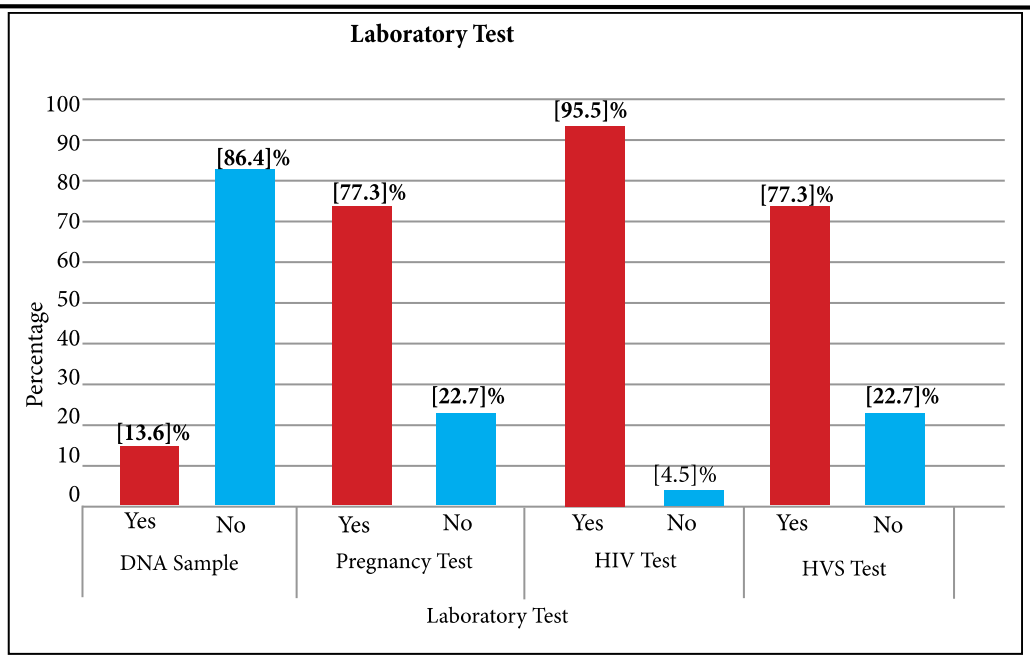


Figure 1: Clinical Assessment of Sexual Offences Victims

Laboratory Test and Results

Types of laboratory tests ordered on the victims as part of sexual offences investigation include: DNA, Pregnancy, HIV and HVS. It appears the forensic DNA which is deemed most crucial in evidential preparation was least requested by the investigators. The HIV test may have been requested for patient management, but utility is limited in proving sexual offences Figure 2 below.



The study sought to find out whether specimen obtained from the victims and perpetrators was sent to forensic laboratories for analysis.

From the findings, majority of the specimens, 77% collected from the victims and perpetrators were not sent to forensic laboratories for analysis, while 23% of the specimens were sent to forensic laboratories for analysis. However, even for the specimens that were sent for analysis, no results were received back. The findings therefore indicated that most of the collected evidence was not sent for further forensic analysis which otherwise would have provided more evidence in the prosecution of the cases Figure 3 below.

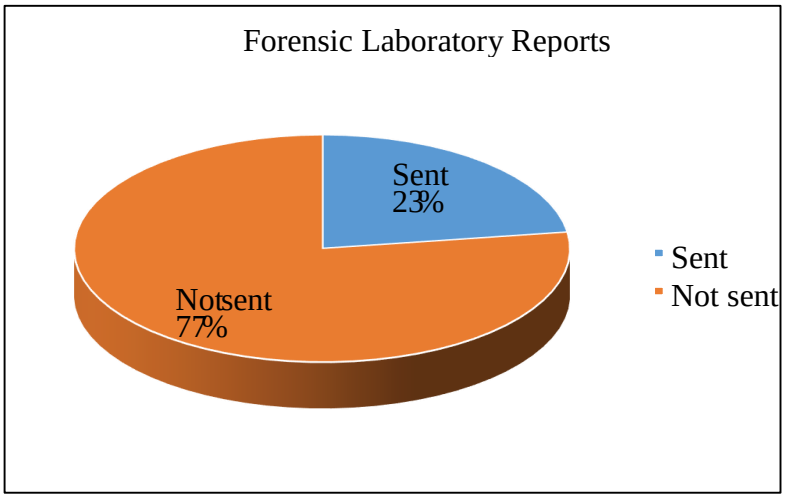


Figure 3: Frequency of Utility Forensic Laboratory in Processing Specimen from Sexual Offences

Likert Scale Questionnaire

The likert questionnaires were administered to the key informants with an expectation to respond how they agreed or disagreed with the statements. A three point Likert scale was used to rate the responses namely: (1) Agree, (2) Neutral and

(3) Disagree.

Table 1: The Manner of Reporting Sexual Offence

Statements	Agree (%)	Neutral (%)	Disagree (%)	N
All sexual offences are usually reported to police station for action	12.5	6.25	81.25	16
Minors of less than 18 years need a parent/guardian while reporting sexual offence against them	93.75	0	6.25	16
Most victims of sexual offences report incidences to police stations before going to seek medical attention	87.5	0	12.5	16
Most victims of sexual offences seek medical attention first before reporting incidence to police stations	18.75	6.25	75	16
Most victims of sexual offences report offence to police station before taking a bath or change of clothing	50	0	50	16
Most victims of sexual offences report offence to police station after taking a bath or changing of clothing	50	0	50	16
Most victims of sexual offences report offences when it's too late to collect forensic medical evidence	81.5	0	18.5	16
Most victim of sexual offence report the offence early enough that aids gathering forensic medical evidence	25	0	75	16
Forensic medical evidence is very vital to corroborate victims of sexual offence allegation	100	0		16
The clinicians attending the victims of sexual offences are conversant with forensic medical evidence	25	0	75	16

The hospitals where the victims of sexual offences are first attended to are conversant on how to collect and preserve forensic medical evidence	37.5	0	62.5	16
The local facilities are well facilitated to collect and preserve forensic medical evidence	62.5	0	37.5	16

Table 2 above show that victims of sexual offences report to the police long after the incidence (81.5%). It was reported that the medical facilities receiving the sexual offence victims have limited capacity to collect forensic medical evidence (62.5%). but highly admitted (100%) that the forensic medical evidence is very important in corroborating sexual offences.

Table 3: Relationship between Agencies Dealing with Sexual Crimes

Statements	**Agree (%)**	**Neutral (%)**	**Disagree (%)**	**N**
There is good collaboration of the police and government health facilities in handling the victims of sexual offences.	62.5	0	37.5	16
There is poor collaboration between the police and government hospitals in collecting and preservation of forensic medical evidences in relation to sexual assault.	87.5	0	12.5	16
Forensic medical evidence is usually the main evidence the investigating officer is usually interested in sexual offences.	56.25	0	43.75	16
The police investigating officer usually encounter challenges in building a strong case due to poor collaborative forensic medical evidence.	93.75	0	6.25	16

Table 3 above indicates that there is poor collaboration between the police and public health facilities in collecting forensic evidence (87.5%). This affect the quality forensic evidence which is critical in the investigation and prosecution of the sexual violence offences (93.75%).

Table 4: Chain of Custody for the Specimen for Sexual Offences

Statements	Agree (%)	Neutral (%)	Disagree (%)	N
Chain of custody is important in handling forensic medical evidence.	31.25	12.5	56.25	16
All the cases of sexual offences there is strict adherence to the chain of custody in handling forensic medical evidence.	25	0	75	16
In your own opinion the clinician handling forensic medical evidence are conversant with the chain of custody in handling this type of evidence.	37.5	0	62.5	16
There is need to support the existing structure on chain of custody in handling forensic medical evidence.	100	0	0	16

The respondents observed that clinicians attending do not need chain of custody for forensic medical evidence (75%) and that it is not observed (56.25%). However, the respondents consider it necessary chain of custody is important for forensic medical evidence (100%), Table 4 above.

Discussion

The study identified the challenges the gender departments in Kiambu County faced in their investigation and prosecution of sexual offences in relation to forensic medical evidence, and in pursuit for justice to the victims of sexual violence.

Based on the key informant finding, most are proud working at the gender department since it assists in the enhancing the knowledge regarding gender based issues. It also provides an opportunity for those working there to learn about what happens in the communities they live in. Working at this particular department provides one with an opportunity to educate the public on gender based violence issues. Professionalism and integrity is a virtual for those working there. There should be a full informed consent of the victim when medico-legal evidence need to be collected and thereafter stored and analysed.

According to those interviewed, there are several problems that are encountered when dealing with sexual offences. Among these problems include: majority of the cases are not reported at the station, there is late reporting of the offences up to more than 72 hours or more when most of the evidence is lost or degraded, with some assault victims taking bath and change their clothing before attending a health facility before reporting the offences. Most victims are not conversant with the procedures of reporting such incidences. This may also explain as per the police report where the victims often not supported in coming forward and premature prosecution of cases before investigations are complete which can result in wrongful acquittals.

There is poor documentation and capture of evidence in both PRC and p3 forms, poor storage facilities for specimens that will be used in analysis, failure of the victims providing full information on the incidences and there is a general fear of being exposed alongside the intimidation from the offenders together with their next of kin. With regard to the challenges that are encountered when gathering forensic medical evidence, the key informants pointed out that some clinicians were not conversant with what type of specimen to take for the forensic analysis. Evidence when collected promptly there is adequacy in recovery of microscopic evidence such as spermatozoa which can be lost in late examination.

It was also pointed out that there are several factors that prove to be a challenge in gathering of forensic medical evidence such as tampering of the crime scene, victimization of the victims, because of tribal or cultural norms and poor facilities and infrastructure at the police stations where confidentiality is needed in such cases. According to Amnesty International, in Kenya, only 25% of sexual assault presented before a court of law leads to successful convictions, this poor outcome is as a result of insufficiency of health workers and law enforcement agent to gather evidence from victims promptly and effective way.

Regarding how the challenges which are usually encountered in gathering of forensic evidence eventually affect the prosecution of these offences, the key informants pointed out that the forensic medical evidence provide more weight to the prosecution, but when this type of evidence is not collected and no clinician to act as medical expert. Thy suggested that in the P3 form, the clinician should state the degree of injury as required in column 5 of the P3 form, clearing indicating whether its harm, grievous harm or maimed. The P3 form should also have a section for DNA match.

In regard to how other working environments affect the investigations and prosecution of sexual offences, it was noted that storage of the forensic medical evidence was very poor at the police stations. This finding is contrary to other countries like Australia, Canada, United Kingdom and United States, where the evidence is secured in a sexual violence kit and may be frozen or stored while the victim decides whether they will pursue recourse in the legal system[7]. Some stations lack private rooms at the police stations for interrogation of the victims and where they can give their evidence in a free manner, lack of transport and facilitation to the Government Chemist and the inability of some officers to attend victims of sexual offences due to lack sensitization on how to handle such cases.

The officers interviewed seemed not to be so conversant with the chain of custody and how to go about it. According to WHO, creation of a secure chain of custody is key to effective processing of medico-legal evidence to avoid compromise before analysis and possible court use. This should be from specimen collection, sealing in separate containers to avoid cross-contamination, labelling, to signing by the person who gathered them.

Conclusion

There still exist challenges in investigation and prosecution of sexual offences and this is adversely affecting justice to the victims. There should be enhanced collaboration between police, health workers and other stake holders in forming multidisciplinary teams to investigate and prosecute sexual offences. There is also need for a community awareness of how report and preserve evidence after the ordeal. Regular special training to the police and clinicians in line to their roles in handling victims of sexual offences. More research need to be done on clinician knowledge in forensic medical evidence and their roles as medical forensic expert during prosecution.

Recommedation

The study recommends that necessary steps should be taken to improve the collaboration of the police gender departments, health facilities and other stake holders who handle victims of sexual assault through joint special training, workshops and sensitization programmes. This will enhance preservation of the evidence and seamless flow of investigation. There also need for national forensic DNA database.

References

Kenya National Bureau of Statistics (2014). *Kenya Demographic and Health Survey*, 2014

Kenya National Police Service (2016). *Crime Situation Report*

KHRC (2011). The Outlawed Amongst Us, a Study of the LGBTI Community's Search for Equality and Non-Discrimination in Kenya.

Laws of Kenya, Revised Edition (2014). *Sexual Offences Act.*

Amnesty International, (2002). *Rape the invisible crime, Kenya. (AI Index: AFR 32/001/2002)*

Quadara, T.A, Fileborn, B, & Parkinson D, (2013). The Role of Forensic Medical Evidence in the Prosecution of Adult Sexual Assault. *Australian Centre for the Study of Sexual Assault Issues,* 15: 15-18.

Smith, D.A, Webb, L.G, Fennell, A.I, Nathan, E.A, Bassindale, C.A, Phillips MA. (2014). *Early Evidence Kits in Sexual Assault: An Observational Study of Spermatozoa Detection in Urine and Other Forensic Specimens.*

WHO (2007). *The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases*: *A Global Review.* Janice Du Mont, Deborah White.

World Health Organization. (2013). *Responding To Intimate Partner Violence and Sexual Violence Against Women: WHO Clinical and Policy Guidelines*.

World Health Organization. (2012). *Understanding and Addressing Violence Against Women: Intimate Partner Violence* (No. WHO/RHR/12.36).